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January 28, 2003

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VIA ELECTRONIC FILING

Mr. William Maher
Bureau Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: *Ex Parte*
CC Docket Nos. 01-338, 96-98, 98-147**

Dear Mr. Maher:

On behalf of XO Communications, Inc. ("XO"), a facilities-based CLEC and IXC that has deployed network facilities nationwide, I hereby state XO's strong support of the January 23, 2003 *ex parte* letter regarding the appropriate impairment standard for the dedicated transport unbundled network element ("UNE") filed by Broadview Networks, Inc., Eschelon Telecom, Inc., KMC Telecom, Inc., NuVox Inc., SNiP LiNK LLC, and Xspedius Management Co. LLC (collectively, the "Joint CLECs"). As explained further below, the Commission should adopt the granularity test for dedicated transport proposed by the Joint CLECs in their January 23 *ex parte*. The Commission's impairment analysis for dedicated transport simply must include route-by-route analysis, such as that proposed by the Joint CLECs. Under no circumstances should the Commission adopt a dedicated transport impairment standard based on non-route triggers, such as special access pricing flexibility or the number of collocators in a central office.

In its January 23 *ex parte*, the Joint CLECs recommend a route-by-route impairment test for dedicated transport based on the ALTS/CompTel granularity test. Under the impairment test proposed by the Joint CLECs, an incumbent local exchange carrier ("ILEC")

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would be relieved of its obligation to provide UNE dedicated transport on a given "A" to "Z" route by demonstrating to the appropriate state public service commission that:

1. At least four competitors are collocated at both the "A" and "Z" points of a transport route;
2. At least three competitors are offering wholesale transport from "A" to "Z" using non-ILEC facilities; and
3. No other legal, practical, economic or operational barriers prevent a carrier from using competitive transport over the "A" to "Z" transport segment.¹

Upon making this showing, the ILEC would no longer have to provide UNE dedicated transport to competitors over the relevant "A" to "Z" route. The state commission would put in place a transition plan to migrate competitors from existing UNE dedicated transport to non-UNE dedicated transport. XO concurs with the Joint CLECs that any transition plan at a minimum should grandfather existing UNE dedicated transport circuits at TELRIC rates for a minimum of two years to ensure an orderly transition from UNE to non-UNE facilities.

Finally, XO strongly urges against any effort by the Commission to promulgate anything other than a route-by-route test for the dedicated transport UNE. Some ILECs suggest, for example, that the Commission simply should look at the number of collocators in central office to determine whether an ILEC needs to provide UNE dedicated transport to that central office.² Any such impairment standard would fail to comport with the intrinsic nature of dedicated transport. At its essence, dedicated transport is a spoke that connects two hubs – the "A" and "Z" points. The number of unrelated individuals located at hub "A" or hub "Z" is wholly irrelevant. Only when an individual provider has a presence at both hubs "A" and "Z" can the spoke be created to provide a dedicated transport offering. This point is beyond obvious. Accordingly, any impairment test other than a route-by-route evaluation would fail to comport with the fundamental nature of dedicated transport.

¹ Joint CLECs *ex parte* at 8 (Jan. 28, 2003).

² See generally, Verizon *ex parte* (Dec. 17, 2002).

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If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad E. Mutschelknaus", with a long horizontal stroke extending to the right.

Brad E. Mutschelknaus
Counsel to XO Communications, Inc.

cc: Christopher Libertelli (via email)
Dan Gonzalez (via email)
Jordan Goldstein (via email)
Matt Brill (via email)
Lisa Zaina (via email)
Michelle Carey (via email)
Tom Navin (via email)
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Julie Veach (via email)
Marlene H. Dortch (via ECFS)

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